

Submission from Jemena

The template below has been developed to enable stakeholders to provide feedback on the draft amendments to the NGL, Regulations and NGR. ESOM strongly encourages stakeholders to use this template, so that it can have due regard to the views expressed by stakeholders on each issue.

1. National Gas Law Amendments

Section	Feedback
<p>6—Amendment of section 27 – Functions and Powers of the AER</p> <p>Section 27(fa); Section 294FA and other sections dealing with similar subject matter</p>	<p>The proposal provides the AER with wide powers with respect to publishing pricing information. Jemena is concerned that providing this power precedes any determination arising from the impending Decision Regulation Impact Statement on Options to Improve Gas Pipeline Regulation (RIS) and related changes. Jemena considers that any changes that may affect pipeline infrastructure consider and are delayed until the relevant issues arising from the RIS are finalised.</p> <p>Care must also be taken in disclosing the information which could impact competition as, in the context of a relatively small market, depending on the number of items being aggregated may not be sufficient to anonymise the information effectively.</p>
<p>26— Amendment of section 91DA—AEMO's obligation in regard to gas statement of opportunities</p> <p>Section 91DA</p>	<p>The proposal gives AEMO very broad powers including ' to collect and collate other information in relation to the natural gas industry'. Jemena considers that the information permitted to be collected by AEMO for the purpose of GSOO should be expressly listed in the NGR and limited to information directly relevant to the GSOO.</p>
<p>27—Insertion of sections 91DB to 91DH</p> <p>Section 91DB Information for the gas statement of opportunities</p>	<p>The grounds for excuse from being required to provide information (i.e. legal professional privilege and self incrimination) are too limited. Investment in Australia's gas industry is highly competitive and often very commercially sensitive. Additionally, the parties may have listing rule disclosure obligations. The exemptions should be extended to exclude such commercially sensitive information or, at the very least clear provisions should be included that would require AEMO to maintain confidentiality and prevent disclosure in GSOO, even in an anonymised form.</p>

Section	Feedback
91DF—GSOO Procedures 91DG—Nature of GSOO Procedures Section 91 DF and 91DG	<p>The sections give AEMO very wide powers to make GSOO Procedures.</p> <p>Given the onerous nature of complying with the requirements, the commercially sensitive nature of the information and the penalties regime, substantive details should be clearly stated in the NGR rather than be in the discretion of AEMO.</p>

2. National Gas Regulations Amendments

Section	Feedback

3. National Gas Rules Amendments

Amendment	Feedback
Part 15B Procedures	
Rule 135EA Matters about which Procedures may be made Rule 135EA (3) (i) (ib); Rule 135EA (6)	<p>Sub-rule (3) (ib) permits AEMO to make procedures about ‘the criteria for classification of a facility development project as a proposed or committed development’. Given the commercially sensitive and competitive nature of infrastructure developments no disclosure should be required on the Bulletin Board until the project is publicly announced.</p> <p>These rules also delegate very broad powers to GSOO Procedures to be developed by AEMO. The information requirements for GSOO surveys should not be left to AEMO procedures and should be clearly identified in the NGR. Given the commercially sensitive nature of the information, significant additional compliance obligations and penalties attached, any requirements should be limited to those that are strictly necessary for GSOO.</p>

Amendment	Feedback
Part 15D Gas statement of opportunities	
Rule 135 KE Obligation to participate in a GSOO survey	<p>Sub-rule (3) sets out that a GSOO reporting entity must provide AEMO information '<u>in relation to the gas industry that the entity has in its possession or control</u>'. This is far too broad and should be narrowed, including limited to the purpose of the GSOO.</p> <p>Additionally, investment in Australia's gas industry is highly competitive and relevant information including project information is very sensitive. Information regarding potential investments that have not yet been publicly announced should not be required through the GSOO Survey. If the decision is ultimately to require such information, then at the very least it should be maintained in confidence by AEMO. Similarly, there will be information that is commercially sensitive even after a project is publicly announced. AEMO should be required to keep this information confidential if requested by the discloser.</p>
Rule 135KF Obligation to participate in a GSOO survey	<p>The GSOO Procedures should ensure that any requests are reasonable, limited to information required for the GSOO and allow sufficient time to respond.</p> <p>Given the commercially sensitive nature and importance of relevant information, AEMO's confidentiality obligations and process for handling claims of confidentiality should be provided in the NGL and not GSOO Procedures.</p>
Rule 135KG Other matters relating to GSOO surveys	<p>Sub-rule (1) requires a reporting entity to provide information to AEMO by the time specified in the GSOO Procedures. Given the significant additional compliance obligations and associated penalties, the 'time specified' should be qualified with 'which must be a reasonable period of time to respond as required'.</p> <p>Sub-rule (2) requires information to be provided 'in the manner and form specified'. These 'manner and form' requirements should be required to be 'reasonable factoring in compliance costs'.</p>
Rule 135 KH Use and disclosure of GSOO survey information	<p>Sub-rule (2) allows AEMO to disclose protected information if the protected information is 'combined or arranged with other information in a manner that will not lead to the identification of the person to whom the protected information relates'. As the east coast gas market is relatively small, it is difficult to see how AEMO will adequately safeguard some information, and any forecasts that AEMO publishes through the GSOO are likely to be attributable to identifiable assets. Stronger protection is required.</p> <p>The NGL should specify how confidential information will be treated including the process for claiming confidentiality to ensure commercially sensitive and competitive information is adequately protected.</p>
Part 17 Miscellaneous provisions relating to the AER	

Amendment	Feedback
Part 18 Natural Gas Services Bulletin Board	
Rule 141 Interpretation capacity right	The definition of 'capacity right' should, for the avoidance of doubt, make it clear that it does not apply to 'as available' or 'interruptible' rights.
daily flow data; and daily production data	The proposed changes to definition of 'daily flow data' and 'daily production data' remove the words 'that is metered as having been, or estimated in good faith ...'. There may be cases where an estimate is required and this should be permitted on similar terms to 135KG(4).
facility development project	The proposed definition allows AEMO to make BB Procedures for classification as a proposed or committed development. The definition should be qualified so that any disclosure requirements only apply after the project is publicly announced to ensure that sensitive competitive information is not required to be disclosed prematurely.
gas swap transaction; short term gas swap transactions; short term gas supply transaction; and BB short term transactions	These definitions are drafted broadly and could inadvertently include, for example in relation to pipeline services, 'lend' services or daily imbalances. It should be made clear that such situations are excluded noting that they would not be within the intention of the requirements and could not reasonably be complied with.
uncontracted primary capacity	This term is not used in the Part. We query its purpose?
Rule 152 Registration by facility developers or for facility developer	Sub-rule 2(a) requires a facility development project be registered within 20 days after satisfying the criteria in the BB Procedures (yet to be determined). Jemena is concerned that this will disclose sensitive commercial information prematurely, in turn affecting competition. It is essential that no registration is required until after the project is publicly announced.
Rule 168 Nameplate rating information Rule 168(4)(b)	Sub-rule 168(4)(b) should include a materiality threshold in respect of updating information for accuracy.

Amendment	Feedback
Subdivision 5.9 Facility development project reporting 190F Obligation to report	This requirement should only apply to 'facility development projects' that have been publicly announced.
Part 18A Compression and storage terms and prices	
[insert rule and sub-rule reference]	
[insert rule and sub-rule reference] [insert extra rows if necessary]	

4. Policy clarifications

Sections 6.1.1, 7.2.1 and 8.6 of the Consultation Paper set out a number of policy clarifications that have been made since the DRIS was published. If you would like to provide feedback on any of these clarifications, please do so in the table below.

Consultation paper section	Amendment	Issue	Feedback
6.1.1	Rule 143A(2A).	Northern Territory offshore reserves and resources	
7.2.1	Rule 188A(1).	Reporting times for LNG export facilities	
8.6	Rules 182(1), 183(1) and 185(1)	Facility operators reporting of forecast nominations	

5. Transitional arrangements

Section 10 of the Consultation Paper sets out the proposed transitional arrangements. If you would like to provide feedback on any of these transitional arrangements, please do so in the table below.

Transitional measure	Feedback
Commencement date	Implementation of the changes will require significant resources including systems and process changes. A reasonable lead time (more than 3 months, possibly 6 months) should be provided to ensure an effective transition.

6. Incidental amendments to Parts 15B and Part 18 of the NGR

Section 11 of the Consultation Paper sets out a number of incidental rule amendments that have been identified for Part 15B and Part 18 of the NGR. If you would like to provide feedback on any of these incidental amendments, please do so in the table below.

Amendment	Feedback
[insert rule and sub-rule reference]	
[insert rule and sub-rule reference] [insert extra rows if necessary]	

7. Proposed civil penalty provisions

Section 12 of the Consultation Paper sets out the proposed tiers for the list provisions in the NGL and NGR that are proposed to be classified as civil penalty provisions. These are based on the proposed classification of tiers for the reform of the Australian Energy Regulator Civil Penalty Regime, which was released for public consultation in July 2020. Energy Ministers' approval of the final classification of tiers, Decision Matrix and Concepts Table is anticipated in late 2020 or early 2021. If you would like to provide feedback on the proposed tiers, please do so in the table below.

Section or rule	Feedback on proposed tiers
[include section or rule]	
[include section or rule]	
[include section or rule]	

8. Potential duplication reduction in the National Gas Law

While not part of the Draft Bill or within scope of the transparency regulatory impact statement, the table in section 13 of the Consultation Paper identifies a number of areas in the Law that would benefit from the removal of some of the duplication that has emerged over time. If you would like to provide feedback on any of the proposed changes, please do so in the table below.

Item number	Feedback on potential changes